IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 23822 of 2004**

Between:

V.Narasimha Rao, s/o late Satyanarayana, aged 50 years,

Administrative Officer (Under dismissal) The New India Assurance Company Limited, Hyderabad.

**..... PETITIONER**

AND

1 The Assistant General Manager, Disciplinary Authority,
The New India Assurance Co.Ltd., 87 MG Road, Mumbai.
2 The General Manager, Appellate Authority,
The New India Assurance Co.Ltd., 87 MG Road, Mumbai.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of certiorari, to call for the records pertaining to the Impugned Order dt.25-6-2004 on the file of the 2nd respondent herein confirming the Dismissal order dt.24-2-2004 of the 1st respondent and to quash the same as illegal, arbitrary, unconstitutional, unjust and the one passed in violation of the statutory rules stipulated under The General Insurance (Conduct, Discipline and Appeal) Rules, 1975 and consequently set aside the Dismissal order dt.24-2-2004 passed by the 1st respondent and to grant such other relief or reliefs as this Hon'ble court deems fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.K.RAM REDDY**

**Counsel for the Respondents: MR.V.SRINIVAS**

**The Court at the admission stage made the following :**

**The Hon'ble Sri Justice**

**K.C. Bhanu**

**W.P. No. 23822 of 2004**

**O R D E R**:

This writ petition is filed challenging the impugned order dated 25.6.2004 on the file of the 2nd respondent herein confirming the dismissal order dated 24.2.2004 of the 1st respondent and to quash the same as illegal and arbitrary.

The disciplinary authority passed an order dated 24.2.2004 by imposing the penalty of dismissal upon the petitioner in terms of Rule 23(h) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The charges are:

> "(i) It is alleged that Sri V. Narasimha Rao, with mala fide intention and ulterior motive issued originals of motor cover notes to one insured and copies of the same cover notes were issued to other insured and the premium collected by him against the original cover notes were not deposited with the office. The instances of issuing same cover note to two different persons have been fully detailed in the statement of imputation and misconduct under item Nos. 1, 2 and 3. In all these three cases, the vehicles covered under the original cover notes were involved in accidents, against which premium were not received by the company, which was misappropriated by Sri V. Narasimha Rao and thereby the company has been faced with liabilities against insurance without receiving any premium. The actions of Sri V. Narasimha Rao has caused a financial loss of Rs.8,847/- being

the premium misappropriated by him.

(ii) Sri V. Narasimha Rao with mala fide intention and ulterior motive and in violation of rules and regulations, had issued blank pre-signed motor cover note books to various agents".

In the appeal, the said punishment was confirmed by order dated 25.7.2004. Challenging the same, the present writ petition is filed.

Two contentions have been raised in this writ petition, one is that the charged officer was not given any opportunity to represent the case by an ex-employee of the Organisation and, secondly, that the original copies of the documents on which the enquiry officer gave a finding have not been furnished to the petitioner and that two other persons were involved in the case but with a mala fide intention the present case is foisted against the petitioner.

Learned standing counsel appearing for the respondents contended that there is a statutory memorial available to the petitioner and therefore he can as well avail the same. With regard to the non-furnishing of original insurance cover notes it is stated by the learned counsel for the respondents that they were given to the insured and the available copies were furnished to the petitioner and therefore there is no violation of principles of natural justice.

With regard to the 1st contention that the petitioner made a representation to permit him to defend by an ex-employee by name K. Rami Reddy but that was rejected, as per Rule 25(6) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 an employee may take assistance of any other employee but not engage legal practitioner for that purpose. 'Employee' is defined under Clause (g) of Rule 2 which reads "any employee of the Corporation and/ors its Subsidiaries other than the casual,

workcharged or contingent staff". Therefore, unless he is a regular employee working in the respondent-Corporation, a retired employee cannot be appointed to defend the case on behalf of the charged officer. Therefore, there is no violation of any Rules.

The other contention is that the original policy covered copies have not been furnished to the petitioner and therefore the respondents have violated the principles of natural justice. The charged officer requested vide his letter dated 20.3.2003 to furnish certain original cover notes. A finding has also been recorded where under the Enquiry Officer requested the Presenting Officer to arrange the material documents sought for by the charged officer. The charged officer is insisting for the originals as the same are necessary so as to proceed further in the matter. The enquiry officer gave a ruling on 9.5.2003 to proceed further as the charged officer has chosen to stay away from the proceedings. The proceedings are held ex parte against him. It is not a case where purposefully the department has withheld the original documents. All the originals were given to the insured. Therefore, it may not be possible for them to produce the original copies. In such view of the matter, it is not a case of denial of principles of natural justice in not furnishing the copies of the same. The available copies with the respondents are furnished.

Under Rule 40 of these Rules, 1975, "an employee whose appeal under these Rules has been rejected by the Appellate Authority subordinate to Chairman/Chairman-cum-Managing Director or in whose case such Appellate Authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such appellate authority". It is not a mercy appeal but it is a memorial to be submitted within six months from the date of receipt of a copy of the appellate

order to the Chairman-cum-Managing Director who has to take appropriate decision. Since the effective and alternative remedy is available to the petitioner and further it is not a case of violation of any principles of natural justice or that the findings are not based upon any evidence, this court is not inclined to entertain the writ petition.

Therefore, the writ petition is disposed of directing the petitioner to file a memorial to the Chairman-cum-Managing Director as required under Rule 40 of the Rules. Since the appellate order dated 25.6.2004 has been received on 18.7.2004 by the petitioner and immediately thereafter he filed writ petition before this court, some delay is there. Therefore, the application to condone the delay in filing the memorial as required under Rule 40 shall have to be considered sympathetically. Thereafter, appropriate decision has to be taken by the Chairman-cum-Managing Director in accordance with the Rules, uninfluenced by any observation made in this order.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Assistant General Manager, Disciplinary Authority,
The New India Assurance Co.Ltd., 87 MG Road, Mumbai.
2 The General Manager, Appellate Authority,
The New India Assurance Co.Ltd., 87 MG Road, Mumbai.

3. 2 CD copies